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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,048	01/17/2002	Paul M. Davis	1073.9370001/DKSC/RLP	1191
26111	7590	05/18/2004	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/050,048		DAVIS ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Marie Patterson		3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-19 and 38 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8-15, 17-19 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restriction***

1. Claims 7 and 16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim, election was made without in Paper No. 10.

***Claim Rejections – 35 USC 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 8 are rejection under 35 U.S. C. 102 (b) as being anticipated by Ivany (4621648).

Ivany shows “footwear”, i.e. an ankle brace with a sole (bottom) and upper which has a portion (202 and 204) which is formed in the throat region (at the front where the portions overlap shown in figure 8) with hooks on one side and loops on the other side as claimed. Alternatively the straps shown in the other embodiments can also be considered to be a “region” of the upper at the throat portion inasmuch as the claims have defined such.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3728

5. Claims 1-4, 10-14, 19, and 38 are rejected under 35 U.S.C. 103(a) as being under 35 U.S.C. 103(a) as being unpatentable over Friton (4486965) in view of Kennedy (5744080).

Friton shows footwear comprising a sole (12), an upper (14), a portion formed from a material with one side having a plurality of hooks (125) and a second side having loops (138 and 139), the portion comprising straps (124 and 126) and vamp portions (136, shown in figures 8 and 9) which are at the throat area of the footwear substantially as claimed except for the exact method of providing the hook and loop fastening materials. Kennedy teaches providing material with hooks on one side and loops on the other side by forming such as a single ply (see figures 7 and 8) to overcome the difficulties resulting from adhesives, sewing, and other methods of providing the hooks and loop elements (see column 1 lines 55-60, column 2 lines 1-5, and 43-62). It would have been obvious to provide the hook and loop materials by forming the portions from single ply material which has these elements integrally formed as taught by Kennedy in the footwear of Friton to reduce bulk, prevent separation of the hook and loop materials, to reduce stiffness, and to make the shoe easier and quicker to produce (due to the manufacturer no having to attach the hook and loops).

6. Claims 1-3, 6, 10-12, 14, 15, 19, and 38 are rejected under 35 U.S.C. 103(a) as being under 35 U.S.C. 103(a) as being unpatentable over Famolare, Jr. (4114297) in view of Kennedy (5744080).

Famolare, Jr. shows footwear comprising a sole (12), an upper (11), a portion with a plurality of "Velcro" (hook and loop) fasteners (20) which extends from the throat of the footwear to the sole, and a strap (26) substantially as claimed except for the exact method of providing the hook and loop fastening materials. Kennedy teaches providing material with hooks on one side and

Art Unit: 3728

loops on the other side by forming such as a single ply (see figures 7 and 8) to overcome the difficulties resulting from adhesives, sewing, and other methods of providing the hooks and loop elements (see column 1 lines 55-60, column 2 lines 1-5, and 43-62). It would have been obvious to provide the hook and loop materials by forming the portions from single ply material which has these elements integrally formed as taught by Kennedy in the footwear of Famolare, Jr. to reduce bulk, prevent separation of the hook and loop materials, to reduce stiffness, and to make the shoe easier and quicker to produce (due to the manufacturer no having to attach the hook and loops).

7. Claims 1-4, 8, 11-14, 17, 19, and 38 are rejected under 35 U.S.C. 103(a) as being under 35 U.S.C. 103(a) as being unpatentable over Williams (4969277) in view of Kennedy (5744080).

Famolare, Jr. shows footwear comprising a sole (15), an upper (17 and 19), a portion with a plurality of hooks (63/71), two straps (55 and 59), and one strap being a heel strap (59) substantially as claimed except for the exact method of providing the hook and loop fastening materials. Kennedy teaches providing material with hooks on one side and loops on the other side by forming such as a single ply (see figures 7 and 8) to overcome the difficulties resulting from adhesives, sewing, and other methods of providing the hooks and loop elements (see column 1 lines 55-60, column 2 lines 1-5, and 43-62). It would have been obvious to provide the hook and loop materials by forming the portions from single ply material which has these elements integrally formed as taught by Kennedy in the footwear of Williams to reduce bulk, prevent separation of the hook and loop materials, to reduce stiffness, and to make the shoe easier and quicker to produce (due to the manufacturer no having to attach the hook and loops).

8. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 8, 11-14, 17, and 38 above, further in view of Kuehnreich (5176624).

Williams as modified above shows footwear substantially as claimed except for the heel portion being formed of two overlapping straps. Kuehnreich teaches forming a heel area as two overlapping straps (10 and 11). It would have been obvious to form the heel as two overlapping straps as taught by Kuehnreich in the footwear of Williams as modified above to increase the adjustability of the footwear in the heel area.

9. Claims 10 and 38 are rejected under 35 U.S.C. 103(a) as being under 35 U.S.C. 103(a) as being unpatentable over Ivany (4621648) in view of Kennedy (5744080).

Ivany shows footwear/clothing with a portion formed from a material with hook elements on one side and pile element on the other (22 and 24) substantially as claimed except for the exact method of providing the hook and loop fastening materials. Kennedy teaches providing material with hooks on one side and loops on the other side by forming such as a single ply (see figures 7 and 8) to overcome the difficulties resulting from adhesives, sewing, and other methods of providing the hooks and loop elements (see column 1 lines 55-60, column 2 lines 1-5, and 43-62). It would have been obvious to provide the hook and loop materials by forming the portions from single ply material which has these elements integrally formed as taught by Kennedy in the footwear of Ivany to reduce bulk, prevent separation of the hook and loop materials, to reduce stiffness, and to make the shoe easier and quicker to produce (due to the manufacturer not having to attach the hook and loops).



*Response to Arguments*

10. Applicant's arguments filed 2/25/04 have been fully considered but they are not persuasive.

In response to applicants' arguments directed towards Ivany, Ivany shows "footwear", i.e. an ankle brace with a sole (bottom) and upper which has a portion (202 and 204) which is formed in the throat region (at the front where the portions overlap shown in figure 8) with hooks on one side and loops on the other side as claimed. Alternatively the straps shown in the other embodiments can also be considered to be a "region" of the upper at the throat portion inasmuch as the claims have defined such.

In response to applicants' arguments directed towards the 103 rejections based on Friton, Famolare, and Williams, the fact that there would be resultant portions of the hook and loop material that would be unused, i.e. superfluous, does not negate the cited motivations used in the above rejections and clearly taught and provided by Kennedy as motivations for combining/using the material of Kennedy in the footwear of Friton, Famolare, and Williams. It is also noted that there are unused portions of hook and loop materials in applicants footwear, it is not understood how providing unused portions, which is what applicant does, would be a reason for not making the above combinations as suggested (and motivated by the clear and explicit motivation of Kennedy) by the Examiner.

In response to applicants' arguments directed towards cutting out holes and stitching, there has been no such suggestion by the Examiner and these arguments are not persuasive. The Examiner has suggested replacing materials, i.e. entire elements/regions/portions, with the material taught by Kennedy in the references of Friton, Famolare, and Williams

Art Unit: 3728

1. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**. For applicant's convenience, the Group Technological Center FAX number is (703) 872-9306. (Note that the Examiner **cannot** confirm receipt of faxes) Please identify Examiner \_\_\_\_ of Art Unit \_\_\_\_ at the top of your cover sheet of any correspondence submitted.

Inquiries only concerning the **merits** of the examination should be directed to Marie Patterson whose telephone number is (703) 308-0069.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to (703) 308-1337.

Check out our web-site at "www.uspto.gov" for fees and other useful information.



Marie Patterson  
Primary Examiner  
Art Unit 3728